IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9392 OF 2005

J.H. Podar High School & anr. ..
Petitioners.
Vs.
State of Maharashtra & Ors. ..Respondents.

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Mr. R.S. Apte with Mr. N.R. Bubna for the Petitioners.
Mr. Nasir Shaikh Masiha for Respondent No.3.

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CORAM: DR. D.Y. CHANDRACHUD, J.

14th July, 2006.

ORAL ORDER :

1. Rule. By consent of the learned counsel and at their request heard forthwith.

2. The Third Respondent was appointed as an Assistant Teacher by an appointment order dated 25th September, 1991 in the J.H. Podar High School at Bhayander (West) conducted by the Petitioners. At the time of her appointment the Third Respondent held a B. A. degree and a Sangeet Visharad. The school was initially unaided but was progressively granted aid by the State Government. Several chances were given to the Third

Respondent to complete her B. Ed. The School Tribunal has noted that the Third Respondent appeared for the B. Ed. examination through the Pillai College at Chembur. The approval to the services of the Third Respondent was rejected by the Education Officer on 15th May, 1999 for want of requisite qualification. The Third Respondent was terminated from service on 29th June, 2002. In these circumstances, the Tribunal held that the termination of the services of the Third Respondent was valid since she did not hold the requisite qualification and in fact, despite the grant of sufficient opportunity, failed to acquire the qualification that is required in law. The Tribunal nevertheless proceeded to award compensation quantified at twelve months' salary to the Third Respondent. That order has been challenged by the management in these proceedings.

3. Section 11 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 deals with the powers of the School Tribunal. If the Tribunal decides that an order of dismissal, removal or reduction in rank is contrary to law, or to the contract or conditions of service or is otherwise illegal or improper, it is empowered to set aside the order of the

management. Sub section (2) of Section 11 reads as follows :

> "11(2) Where the Tribunal, after giving reasonable opportunity to both parties of being heard, decides in any appeal that the order of dismissal, removal, otherwise termination of service or reduction in rank was in contravention of any law (including any rules made under this Act), contract or conditions of service for the time being in force or was otherwise illegal or improper, the Tribunal may set aside the order of the Management, partially or wholly, and direct the Management,
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> (a) to reinstate the employee on the same post or on a lower post as it may specify;
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> (b) to restore the employee to the rank which he held before reduction or to any lower rank as it may specify;
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> (c) to give arrears of emoluments to the employee for such period as it may specify;
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> (d) to award such lesser punishment as it may specify in lieu of dismissal, removal, otherwise termination of service or reduction in rank, as the case may be;
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> (e) where it is decided not to reinstate the employee or in any other appropriate case, [to give to the employee twelve month's salary (pay and allowances, if any) if he has been in the service of the school for ten years or more and six months' salary (pay and allowances, if any) if he has been in service of the school for less than ten years], by way of compensation, regard being had to loss of employment and possibility of getting or not getting suitable employment thereafter, as it may specify; or
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> (f) to give such other relief to the employee and to observe such other conditions as it may specify, having regard to the circumstances of the case."

4. Upon setting aside the order of termination, dismissal or removal, the Tribunal is empowered to reinstate the employee. Clause (e) provides that where it is decided not to reinstate the employee or in any other appropriate case, the Tribunal may grant the employee twelve months' salary if she has been in service for ten years or more. In the present case, the Tribunal has held that the order of termination was valid and proper. The order has not been challenged by the employee. The prefactory part of Section 11(2) empowers the Tribunal to set aside an unlawful order of termination or reduction in rank. Upon setting aside the order, the Tribunal can then grant the reliefs set out in clauses a to f. The jurisdiction to grant the reliefs set out in clauses a to f exists only if the order passed by the employer is found to be unlawful in the sense that it contravenes law or contract. If the order passed by the employer is found to be valid, the jurisdiction of the Tribunal to award relief in terms of clauses a to f does not exist. The Tribunal is empowered to award compensation where it is decided not to reinstate the employee or in any other case. Clause (e) however, applies in a situation wherein the Tribunal comes to the conclusion that the termination, dismissal or removal was contrary to law. Once the Tribunal has held that the termination was valid and

proper, it was not open to the Tribunal to proceed to grant compensation to the teacher concerned. In these circumstances, the impugned order of the Tribunal awarding compensation is ex facie erroneous and will have to be quashed and set aside.

5. The Petition is allowed. Rule is made absolute by quashing and setting aside the directions contained in the impugned order of the Tribunal for the payment of compensation. There shall be no order as to costs.